

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	§	Chapter 11
	§	
W.R. GRACE & CO., et al.,	§	Jointly Administered
	§	Case No. 01-01139 (KJC)
Debtors.	§	
	§	

**FEE AUDITOR'S FINAL REPORT REGARDING THE SIXTY-SEVENTH
THROUGH EIGHTY-FIRST MONTHLY APPLICATIONS AND THE
FINAL FEE APPLICATION OF NORTON ROSE FULBRIGHT CANADA LLP
(F/K/A OGILVY RENAULT LLP) FOR COMPENSATION FOR
SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES FOR
THE PERIOD FROM OCTOBER 17, 2006 THROUGH FEBRUARY 3, 2014**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Sixty-Seventh through Eighty First Monthly Fee Applications and the Final Fee Application of Norton Rose Fulbright Canada LLP (f/k/a Ogilvy Renault LLP) for Compensation for Services Rendered and Reimbursement of Expenses for the Period from October 17, 2006 through February 3, 2014 (the “Applications”).

BACKGROUND

1. Norton Rose Fulbright Canada LLP (“Norton Rose”) (f/k/a Ogilvy Renault LLP) was retained as special counsel to the debtors and debtors-in-possession in Canada. In the Applications, Norton Rose seeks approval of fees and expenses as follows: fees totaling CDN \$85,154.37¹ and expenses totaling CDN \$926.42 for the period of July 1, 2012, through February 3, 2014 (the “Sixty-Seventh through Eighty-First Monthly Applications”), and final approval of fees totaling CDN

¹All monetary amounts listed in this report are in CDN.

\$2,214,457.00² and expenses totaling CDN \$145,161.56³ for its services from October 17, 2006 through February 3, 2014 (the "Final Application Period").

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Applications in their entirety, including each of the time and expense entries included in the exhibits to the Applications, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2014, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, Issued January 30, 1996 (the "Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on Norton Rose based upon our review, and we received a response from Norton Rose, portions of which response are quoted herein.

DISCUSSION

Sixty-Seventh through Eighty-First Monthly Applications

²We note that the total of the fees requested in Norton Rose's 22 prior fee applications, plus the compensation sought in the Sixty-Seventh through Eighty-First Monthly Applications, is \$2,237,070.87. It appears that Norton Rose has deducted from this amount all of the reductions ordered by the Court for the prior periods, which periods are discussed in more detail in paragraph 9, to arrive at the figure it seeks of \$2,214,457.00. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

³We note that the total of the expenses requested in Norton Rose's 22 prior fee applications, plus the expenses sought in the Sixty-Seventh through Eighty-First Monthly Applications, is \$145,161.56. It does not appear that Norton Rose has deducted from this amount any of the reductions ordered by the Court for the prior periods, which periods are discussed in more detail in paragraph 9, to arrive at the figure it seeks of \$145,161.56. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

3. We noted that in its December 2012 monthly fee application, Norton Rose had requested fees totaling \$2,487.37. However, the fees in the attached fee detail totaled only \$2,462.50, for a difference of \$24.87. We asked Norton Rose about this discrepancy, and Norton Rose responded: "We agree with paragraph 3... of the report..." We appreciate Norton Rose's response and recommend a reduction of \$24.87 in fees.

4. We noted that in Norton Rose's December 2013 monthly fee application, Norton Rose had requested expenses totaling \$24.80. However, the expenses listed in the application totaled \$25.30, for a difference of \$0.50. We asked Norton Rose about this discrepancy, and Norton Rose responded: "We agree with paragraph ... 4 ... of the report...." We appreciate Norton Rose's response and recommend an increase of \$0.50 in expenses.

5. Thus, we recommend approval of \$85,129.50 in fees (\$85,154.37 minus \$24.87) and \$926.92 in expenses (\$926.42 plus \$0.50) for Norton Rose's Sixty-Seventh through Eighty-First Monthly Applications.

Final Application Period

General Issues

6. We noted that although Norton Rose had requested final approval of fees totaling \$2,214,457.00, we calculated Norton Rose's final fee request at \$2,173,328.50, for a difference of \$41,128.50.⁴ We provided our calculations to Norton Rose, and Norton Rose responded: "We agree with paragraph... 5...⁵ of the report..." We appreciate Norton Rose's response and recommend that

⁴This amount includes the \$24.87 fee reduction recommended for the Sixty-Seventh through Eighty-First Monthly Applications. See paragraph 3.

⁵Paragraph 6 of this report was paragraph 5 in our initial report.

Norton Rose's final fee request be reduced by \$41,103.63.⁶

Twenty-Fourth Interim Period

7. We noted the following time entries in Ogilvy Renault's March 2007 monthly fee application which appeared to include non-working travel time:

23/3/07	Allison Kuntz	Travel to Vancouver to review Grace documents.	6.50	\$1,982.50
26/3/07	Karen Whibley	Travel to Ajax (1.2);....	1.20	\$258.00
27/3/07	Karen Whibley	Travel to Vancouver (6.6);....	6.60	\$1,419.00
29/3/07	Karen Whibley	Travel from Vancouver to Toronto.	8.60	\$1,849.00
			22.90	\$5,508.50

Pursuant to Local Rule 2016-2(d)(viii): "Travel time during which no work is performed shall be separately described and may be billed at no more than 50% of regular hourly rates." We asked Norton Rose whether the required 50% discount had been applied to this time, and Norton Rose responded:

Additionally, it does not appear as though the 50% discount to travel time was applied in respect of the time entries you highlighted at paragraphs 7 and 8 of the report.

We appreciate Norton Rose's response and recommend an additional reduction of \$2,754.25 in fees for the Twenty-Fourth Interim Period.

Twenty-Fifth Interim Period

8. We noted the following time entries in Ogilvy Renault's April and June 2007 monthly fee applications that appeared to include non-working travel time:

⁶The remainder of the \$41,128.50 difference was due to our recommendation of a \$24.87 reduction for the Sixty-Seventh through Eighty-First Monthly Applications (*see* paragraph 3).

1/4/07	Allison Kuntz	Travel to Edmonton (2.5);....	2.50	\$762.50
5/4/07	Allison Kuntz	Travel from Calgary to Toronto.	7.00	\$2,135.00
3/6/07	Allison Kuntz	Travel to Winnipeg, Manitoba in preparation for attendance at the W.R. Grace facility to review documents for relevance to the Chapter 11 proceedings.	6.00	\$1,830.00
5/6/07	Allison Kuntz; travel from Winnipeg, Manitoba to Toronto Ontario (6.0).	6.00	\$1,830.00
			21.50	\$6,557.50

Pursuant to Local Rule 2016-2(d)(viii): “Travel time during which no work is performed shall be separately described and may be billed at no more than 50% of regular hourly rates.” We asked Norton Rose whether the required 50% discount had been applied to this time, and Norton Rose responded:

Additionally, it does not appear as though the 50% discount to travel time was applied in respect of the time entries you highlight at paragraphs 7 and 8 of the report.

We appreciate Norton Rose’s response and recommend an additional reduction of \$3,278.75 in fees for the Twenty-Fifth Interim Period.

Prior Interim Applications

9. We note that we previously filed the following final reports for each of Norton Rose’s prior interim applications, which final reports we incorporate by reference herein, and we also note the following orders that ruled on Norton Rose’s prior interim fee applications:

24th Period: Fee Auditor’s Final Report Regarding Fee Application of Ogilvy Renault LLP for the Twenty-Fourth Interim Period (Docket #16690), filed on or about August 29, 2007, in which we recommended approval of fees totaling

\$146,920.00 and expenses totaling \$6,036.76, reflecting our recommended reductions of \$59,277.50 in fees and \$83.09 in expenses, as further explained in paragraph 3 of that final report. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Fourth Period, dated September 25, 2007 (Docket #16916).

25th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Fifth Interim Period (Docket #17542), filed on or about December 4, 2007, in which we recommended approval of fees totaling \$103,666.00 and expenses totaling \$4,061.30. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Fifth Period, dated December 13, 2007 (Docket #17629).

26th Period: Fee Auditor's Final Report Regarding Fee Application of Ogilvy Renault LLP for the Twenty-Sixth Interim Period (Docket #18119), filed on or about February 25, 2008, in which we recommended approval of fees totaling \$265,184.00 and expenses totaling \$105,203.23. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Sixth Period, dated March 12, 2008 (Docket #18270).

27th Period: Fee Auditor's Final Report Regarding the Fee Application of Ogilvy Renault LLP for the Twenty-Seventh Interim Period (Docket #18743), filed on or about May 19, 2008, in which we recommended approval of fees totaling \$171,316.00 and expenses totaling \$6,754.82, reflecting our recommended

reduction of \$2,080.00 in fees, as further explained in paragraph 3 of that final report. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Seventh Period, dated June 23, 2008 (Docket #18989).

28th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Eighth Interim Period (Docket #19535), filed on or about September 15, 2008, in which we recommended approval of fees totaling \$79,596.50 and expenses totaling \$1,835.03. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Eighth Period, dated October 1, 2008 (Docket #19663).

29th Period: Fee Auditor's Final Report Regarding the Fee Application of Ogilvy Renault LLP for the Twenty-Ninth Interim Period (Docket #20096), filed on or about November 19, 2008, in which we recommended approval of fees totaling \$200,550.50 and expenses totaling \$5,040.37, reflecting our recommended reduction of \$2,360.00 in fees, as further explained in paragraph 3 of that final report. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Ninth Period, dated December 17, 2008 (Docket #20283).

30th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirtieth Interim Period (Docket #21063), filed on or about March 21, 2009, in which we recommended

approval of fees totaling \$387,223.50 and expenses totaling \$3,660.38.

These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirtieth Period, dated April 2, 2009 (Docket #21173).

31st Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-First Interim Period (Docket #22047), filed on or about June 10, 2009, in which we recommended approval of fees totaling \$70,167.00 and expenses totaling \$961.76. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-First Period, dated July 7, 2009 (Docket #22354).

32nd Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Thirty-Second Interim Period (Docket #23240), filed on or about September 15, 2009, in which we recommended approval of fees totaling \$57,332.00 and expenses totaling \$925.75. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Second Period, dated September 28, 2009 (Docket #23352).

33rd Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Third Interim Period (Docket #23927), filed on or about December 3, 2009, in which we recommended approval of fees totaling \$32,882.00 and expenses totaling \$211.78. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Third Period, dated December 11, 2009 (Docket

#23996).

34th Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Thirty-Fourth Interim Period (Docket #24438), filed on or about March 11, 2010, in which we recommended approval of fees totaling \$51,643.50 and expenses totaling \$1,184.45. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Fourth Period, dated March 19, 2010 (Docket #24470).

35th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Thirty-Fifth Interim Period (Docket #24856), filed on or about May 28, 2010, in which we recommended approval of fees totaling \$160,053.50 and expenses totaling \$1,235.79. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Fifth Period, dated June 7, 2010 (Docket #24917).

36th Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Thirty-Sixth Interim Period (Docket #25384), filed on or about September 10, 2010, in which we recommended approval of fees totaling \$187,329.00 and expenses totaling \$3,828.81. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Sixth Period, dated September 13, 2010 (Docket #25397).

- 37th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Seventh Interim Period (Docket #25850), filed on or about December 2, 2010, in which we recommended approval of fees totaling \$4,966.50 and expenses totaling \$170.43. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Seventh Period, dated December 10, 2010 (Docket #25905).
- 38th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Eighth Interim Period (Docket #26519), filed on or about March 9, 2011, in which we recommended approval of fees totaling \$12,294.00 and expenses totaling \$280.49. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Eighth Period, dated March 25, 2011 (Docket #26627).
- 39th Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Ninth Interim Period (Docket #27116), filed on or about June 21, 2011, in which we recommended approval of fees totaling \$10,270.50 and expenses totaling \$201.83. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Ninth Period, dated June 30, 2011 (Docket #27188).
- 40th Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee

Applications with *De Minimis* or No Fee or Expense Issues for the Fortieth Interim Period (Docket #27507), filed on or about August 25, 2011, in which we recommended approval of fees totaling \$65,112.00 and expenses totaling \$760.44. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Fortieth Period, dated September 20, 2011 (Docket #27622).

41st Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-First Interim Period (Docket #27770), filed on or about October 18, 2011, in which we recommended approval of fees totaling \$39,922.00 and expenses totaling \$665.57. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-First Period, dated December 14, 2011 (Docket #28150).

42nd Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Second Interim Period (Docket #28548), filed on or about February 20, 2012, in which we recommended approval of fees totaling \$14,873.00 and expenses totaling \$457.29. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Second Period, dated March 23, 2012 (Docket #28705).

43rd Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Third Interim

Period (Docket #28900), filed on or about May 9, 2012, in which we recommended approval of fees totaling \$4,465.00 and expenses totaling \$183.96. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Third Period, dated June 14, 2012 (Docket #29054).

44th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Fourth Interim Period (Docket #29449), filed on or about August 13, 2012, in which we recommended approval of fees totaling \$16,736.50 and expenses totaling \$383.09. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Fourth Period, dated October 19, 2012 (Docket #29746).

45th Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Seventh Interim Period (Docket #30840), filed on or about July 17, 2013, in which we recommended approval of fees totaling \$5,696.00 and expenses totaling \$108.72. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Seventh Period, dated July 31, 2013 (Docket #30907).

45th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Ninth Interim Period (Docket #31404), filed on or about November 26, 2013, in which we

recommended approval of fees totaling \$5,696.00 and expenses totaling \$108.72. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Ninth Period, dated December 17, 2013 (Docket #31482).

10. We have reviewed the final reports and orders allowing fees and expenses for the prior interim periods, and we do not believe there is any reason to change any of the amounts awarded for the prior interim periods, with the exception of the Forty-Fifth Interim Period. Due to an oversight, Norton Rose's fees of \$5,696.00 and expenses of \$108.72 were listed in both the Forty-Seventh Interim fee order and the Forty-Ninth Interim fee order and were, therefore, approved twice. However, because Norton Rose's Final Application does not include the duplicate award, no further reduction to Norton Rose's final fee and expense request is necessary.

CONCLUSION

11. Thus, we recommend final approval of CDN \$2,167,295.50 in fees (CDN

\$2,214,457.00⁷ minus \$47,161.50)⁸ and CDN \$145,078.97 in expenses (CDN \$145,161.56⁹ minus \$82.59)¹⁰ for Norton Rose's services for the Final Application Period.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.



By: _____

Warren H. Smith
Texas State Bar No. 18757050

2235 Ridge Road, Suite 105
Rockwall, Texas 75087
214-698-3868
214-722-0081 (fax)
whsmith@whsmithlaw.com

⁷We note that the total of the fees requested in Norton Rose's 22 prior fee applications, plus the compensation sought in the Sixty-Seventh through Eighty-First Monthly Applications, is \$2,237,070.87. It appears that Norton Rose has deducted from this amount all of the reductions ordered by the Court for the prior periods, which periods are discussed in more detail in paragraph 9, to arrive at the figure it seeks of \$2,214,457.00. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

⁸This \$47,161.50 reduction is the total of: (a) \$41,103.63 – correction of an error in Norton Rose's final fee calculation (*see* paragraph 6), (b) \$2,754.25 – additional reduction to the Twenty-Fourth Interim fees (*see* paragraph 7), (c) \$3,278.75 – additional reduction to the Twenty-Fifth Interim fees (*see* paragraph 8), and (d) \$24.87 – our recommended reduction for the Sixty-Seventh through Eighty-First Monthly Applications (*see* paragraph 3).

⁹We note that the total of the expenses requested in Norton Rose's 22 prior fee applications, plus the expenses sought in the Sixty-Seventh through Eighty-First Monthly Applications, is \$145,161.56. It does not appear that Norton Rose has deducted from this amount any of the reductions ordered by the Court for the prior periods, which periods are discussed in more detail in paragraph 9, to arrive at the figure it seeks of \$145,161.56. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

¹⁰This \$82.59 reduction is the total of \$83.09 in Court-approved reductions for the prior interim periods, not previously deducted by Norton Rose (*see* paragraph 9), plus our recommended \$0.50 credit for the Sixty-Seventh through Eighty-First Monthly Applications (*see* paragraph 4).

FEE AUDITOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 18th day of July, 2014.



Warren H. Smith

SERVICE LIST
Notice Parties

The Applicant

Vasuda Sinha
Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON
M5J 2Z4, Canada

The Debtors

Richard Finke
Assistant General Counsel
W.R. Grace & Co.
7500 Grace Drive
Columbia, MD 21044

United States Trustee

Richard Schepacarter
Office of the United States Trustee
844 King Street, Lockbox 35, Room 2207
Wilmington, DE 19801

Counsel for the Debtors

John Donley
Adam Paul
Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, IL 60654

Laura Davis Jones, Esq.
James E. O'Neill
Pachulski Stang Ziehl & Jones LLP
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, DE 19899-8705

Counsel to the Official Committee of Unsecured Creditors

Denise Wildes
Stroock & Stroock & Lavan
180 Maiden Lane
New York, NY 10038-4982

Michael R. Lastowski
Duane Morris LLP
222 Delaware Avenue, Suite 1600
Wilmington, DE 19801

Counsel to the Official Committee of Property Damage Claimants

Scott L. Baena
Jay Sakalo
Bilzin, Sumberg, Baena, Price & Axelrod
1450 Brickell Avenue, Suite 2300
Miami, FL 33131

Michael B. Joseph
Theodore J. Tacconelli
Lisa Coggins
Ferry & Joseph, P.A.
824 Market Street, Suite 904
Wilmington, DE 19801

Counsel to the Official Committee of Personal Injury Claimants

Elihu Inselbuch
Rita Tobin
Caplin & Drysdale
600 Lexington Avenue, 21st Floor
New York, NY 10022-6000

Marla R. Eskin
Mark Hurford
Kathleen Campbell Davis
Campbell & Levine, LLC
222 Delaware Avenue, Suite 1620
Wilmington, DE 19801

Counsel to the Official Committee of Equity Holders

Philip Bentley
David E. Blabey, Jr.
Kramer Levin Naftalis & Frankel
1177 Avenue of the Americas
New York, NY 10036

Teresa K.D. Currier
Saul Ewing LLP
222 Delaware Avenue
P.O. Box 1266
Wilmington, DE 19899